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RULSJGA/COMDT COGARD WASHDC
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SUBJECT: THE U.S. - CANADA BORDER IN 2007: GROUND TRUTH AND POLICY IMPLICATIONS (PART III OF III - IMMIGRATION, FIRST NATIONS, WHTI, AND LAW ENFORCEMENT)

SUMMARY

SENSITIVE BUT UNCLASSIFIED--PLEASE PROTECT ACCORDINGLY.

¶1. (SBU) As part of a year-long effort to "map the border," Mission Canada officers visited the frontier to observe ground truth in how the border functions and how to make it work better. Part I of this three-part series reviewed conclusions and recommendations, Part II covered ports of entry, trade, and the environment. This third part reviews immigration models, First Nations issues, WHTI, and law enforcement.

IMMIGRATION AND MULTICULTURALISM

¶2. (SBU) Canada has taken in over one million immigrants since September 2001, about 200,000 per year, and now its population has the second highest proportion of immigrants in the world at 17%, surpassed only by Australia at 21%. The forecast in 2008 is 265,000 new immigrants. Before 1960 Canada's immigrants came from Europe, but changing economic and demographic trends have resulted in an influx of East and South Asians since the 1980s. India, China, and the Philippines are the three most important source countries for new immigrants to Canada. Immigrants in Canada settle primarily in large cities, with over 46% of Toronto's population now being foreign born, followed by Vancouver (37.5%), Montreal (28%), and Ottawa (17%).

¶3. (SBU) Canadian officials point out that there are multiple checkpoints along the road to immigration and a solid system for reviewing the names and background of immigrants along the way. In Mission Canada's judgment, Canada's system for immigration security checks approaches that of the U.S. (Comment: However, although its focus is on all travelers to Canada and not immigrants in particular, the October 30, 2007, report by the Auditor General on the Canada Border Services Agency points up the need for better use by CBSA of risk-based processes (including collection and analysis of intelligence) and improved procedures for creating and using lookouts. End comment.)

¶4. (SBU) In December 2004, Canada and the U.S. implemented a "Safe Third" agreement as part of the Smart Border Action

Plan. Safe Third guidelines prevent refugee applicants from applying for refugee status in more than one country or "asylum shopping," i.e., not looking primarily for protection from persecution but rather for the country with high acceptance rates and the most generous resettlement arrangements. This agreement was the first of its kind for Canada, and still represents the only safe third agreement in force here. Currently it affects only those refugees who apply for asylum at a land border port of entry, and not those who fly from U.S. airports into Canada or make asylum claims at inland offices. Since the implementation of this agreement, Canada has seen a one-third drop in refugee applications.

WHTI - GENERAL

¶ 15. (SBU) When Congress passed the December 2004 Intelligence Reform and Terrorism Prevention Act, few people focused on the details of the text, including the provision requiring that all travelers entering or re-entering the United States would eventually be required to present a passport or other secure, accepted document when applying for admission. (Currently, NEXUS, FAST, SENTRY, active duty military and merchant mariner's IDs are accepted alternatives.) The administration has implemented this requirement through the Western Hemisphere Travel Initiative (WHTI), requiring air travelers to have a passport beginning January 23, 2007, to be followed at a later date by those entering the U.S. by land or sea (to include ferries).

¶ 16. (SBU) The WHTI passport requirement was not well received in Canada. Many perceived it as an unfriendly gesture toward

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a country that is not only America's largest trading partner, but which has proven itself a steadfast and loyal ally in both war and peace. Because of the unique U.S.-Canada relationship, many of our northern neighbors thought there should be special circumstances for Canadians. The Government of Canada, Canadian parliamentarians and provincial government officials made entreaties across the board, asking essentially for Canadian citizens to be exempted from the passport rule. The Border Caucus and many individual Members of Parliament, as well as Canadian tourist and travel associations, submitted comments on the notice of proposed rulemaking requiring passports.

¶ 17. (SBU) The consistent message of Mission Canada, from Ottawa to Halifax to Vancouver, has been that Canadians, like American citizens, need to get a passport. There are no exemptions for Canadians any more than there are for Americans.

FIRST NATIONS SEEK WHTI EXCEPTION

¶ 18. (SBU) We have heard concerns from both Native Americans and "First Nations" (the Canadian equivalent of our Native Americans, referring to Indians, but not to Inuit (our Eskimos) or Metis (persons of mixed Caucasian, mainly French, and Indian origin) communities about the impact of WHTI. The concerns are both practical (costs and bureaucracy) and ideological: Canadian First Nations' members perceive themselves to be "people of the land" with a sovereign and inherent right to traverse the border, without a need to employ a document attesting to citizenship. First Nations interlocutors frequently reference the Jay Treaty of 1794 between the UK and USA, which they assert provides the right of "free passage" back and forth across the frontier.

¶ 19. (SBU) In fact, the Jay Treaty was abrogated when hostilities commenced between the United States and United Kingdom in 1812. Nevertheless, elements of that Treaty have been incorporated into U.S. law; e.g., Section 289 of the Immigration and Nationality Act which provides that "Nothing

in this title shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race." (No equivalent exists in Canadian law.)

¶10. (SBU) Thus, American law allows for "free passage" across the border, but the law does not exempt individuals from documentary requirements; compliance with the documentary requirements of WHTI is necessary. Some First Nations groups have inquired whether the Canadian government's "Status Indian Card" would provide sufficient documentary proof. Canada has some 770,500 Registered Indians on the Indian Register maintained by the Ministry of Indian and Northern Affairs. Individuals on the Indian Register are entitled to Status Indian Cards (AKA Treaty Cards) verifying their eligibility for various social services, health care, and duty-free privileges. Ottawa is nearly ready to produce a more secure new generation of Status Indian Card. Canada intends to submit the new card to the Department of Homeland Security (DHS) for consideration as an "alternative document" that would meet WHTI requirements. DHS has indicated that it will take a look at the new Status Indian Card. Several First Nations groups have expressed interest in producing their own ID cards for border crossing purposes. From a border management perspective, a standard, secure, uniform Status Indian Card is clearly preferable to a plethora of cards issued by individual First Nations' authorities.

WHTI - AIR

¶11. (SBU) The passport requirement went into effect on January 23 for air travelers. Prior to that time, Mission Canada engaged in a concerted outreach and public information campaign to ensure that both Canadians and Americans resident in Canada were aware of the new regulation. Air travel from Canada to the U.S. was not disrupted on January 23 because of

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the passport requirement. An estimated 97 percent of travelers were in possession of passports when they arrived at the check-in desk. By January 26, an estimated 99 percent of travelers were in compliance.

¶12. (SBU) One reason that implementation of the WHTI air rule went so smoothly was Mission Canada's proactive approach in getting the message out. Another factor was CBP's phased-in transition of the requirement, which provided that CBP would not fine carriers that boarded U.S.-bound passengers who did not have passports (but did have other legitimate documents attesting to identity and citizenship). Officers at all posts in Mission Canada worked with CBP preclearance officers at Canadian airports to inform the carriers of this liberal phased-in approach. Many of the air carrier station managers in Canada, particularly at smaller interior airports, had not heard about the phased-in program and were planning to deny boarding to passengers without passports on January 23. Once they received the updated and accurate information, airline personnel did not deny boarding simply for lack of a passport. The delayed flights, long lines of angry and disgruntled passengers, and complaints to the media that many expected did not occur. As the Deputy Chief of Mission described it, watching January 23 preclearance processing in Toronto's Pearson Airport, "It was a non-event event."

WHTI - LAND

¶13. (SBU) The challenge ahead is how best to prepare travelers to meet the second part of the WHTI regulations, which will require anyone entering the U.S. through the land border to have a valid passport or approved alternate document. Barring legislation to change the schedule, this part will be implemented (again, likely via a phased-in

process) in 2008. (Comment: Secretary Chertoff told the Ambassador in an October 29, 2007 meeting that DHS intended to enforce the requirement for passports or other acceptable secure documents on people entering the U.S. by land and sea in the late summer or early fall of 2008. Although this was not a fixed date, DHS would definitely impose the passport requirement during 2008. End comment.) The Canadian government has been in denial for a long while, holding out the hope that the U.S. Congress and administration would amend the law in ways favorable to Canada. Canada's delay in working out a way to comply with U.S. air entry rules resulted in a last-minute rush on Canadian passport offices early in 2007. Canadian passport applicants waited three months for a passport, causing thousands to change their spring and summer travel plans for 2007. We do not see enough progress on the Canadian side to prevent a similar passport backlog when land crossings require a passport in 2008. Canadian officials are still hopeful that Congress will mandate the implementation date for passports for land border crossings to be June of 2009.

WHTI - ALTERNATE DOCUMENTS

¶14. (SBU) Canadian provincial and U.S. state governments are now seeking to produce an acceptable alternative land border crossing document that can be used as an alternative to a passport. Washington State initiated a pilot project to produce an enhanced, more secure driver's license that records the bearer's citizenship. DHS says that it is willing to consider the use of such a document at the land border. The pilot project is being developed in fall 2007, with the first enhanced licenses possibly issued early in 2008. British Columbia has proposed a similar driver's license project. The states of Vermont, Arizona, and New York have agreed to issue enhanced driver's licenses, and California and Ohio may join that group. The provinces of Ontario and Quebec have also indicated that they will issue enhanced driver's licenses. In the case of Ontario at least, an enhanced driver's license may take more time and expense to properly implement than Ontario authorities would like to admit. Ontario driver's licenses are stored and issued by private, storefront contractors, not provincial government

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officers, and the media has pointed out gaps in accountability and security.

BORDER LAW ENFORCEMENT - TOWARDS A SEAMLESS APPROACH

¶15. (SBU) The post-9/11 move to enhance security on the border has led to a number of new initiatives to eliminate gaps in border geography, enhance information sharing, and better coordinate law enforcement operations. Mission Canada reinvigorated several forums to better coordinate cross border crime and counter-terrorism policy - principally the Cross Border Crime Forum and the Bilateral Consultative Group on Counter-Terrorism. The U.S. and Canada conducted the first trial "Shiprider" program to move towards cooperative marine policing of the Great Lakes and St. Lawrence Seaway, which we hope will see law enforcement officers of both nations assigned to the other's border patrol boats. Our two countries initiated the Integrated Border Enforcement Team (IBET) program, in which officers from the U.S. and Canada share office space at 15 locations on both sides of the border in order to better share information and coordinate local law enforcement activities. And the U.S. and Canada have conducted national and local exercises to test our systems for responding to cross-border incidents.

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WILKINS